

**Town of Hinesburg**  
**Development Review Board**  
**May 21, 2019**

Approved June 4, 2019

Members Present: Dennis Place, John Lyman, Ted Bloomhardt, Jonathan Slason, Dick Jordan, Bryan Currier (alternate), Greg Waples

Members Absent: Sarah Murphy

Applicants: Matt Giroux, John Little, Steve Giroux and Claudette Amparo

Public Present: None

Also Present: Mitchel Cypes (Development Review Coordinator), Suzanne Mantegna (Zoning Administrator), and Kate Kelly (Recording Secretary)

Dennis P. called the meeting to order at 7:30 PM, and welcomed Bryan Currier to the Board.

**Agenda Changes: None.**

**Review minutes of the May 7, 2019 meeting:**

Ted B. made a minor amendment to the minutes.

Ted B. **made a motion to approve the minutes of May 7, 2019 as amended.** John L. **seconded the motion.** The Board **voted 6-0.**

**Matthew Giroux:** Appeal of a Zoning Administrator Determination of a stream location on a property located at 328 Place Road West in the Rural Residential 1 Zoning District. *Continued from 2/5/19.*

Dennis P. recused himself, and Dick J. stepped in to lead the meeting. Dick J. said this appeal hearing is continued from February 5, and opened it to those who were on the site visit. Mitchel C. stated that Dick J., Bryan C., John Lyman., Ted, B. Jon S., and Dennis P. attended the site visit, but Dennis P. recused himself from the hearing. Matt G., John Little, Steve G. were also in attendance.

Greg W. entered the meeting.

Ted B. said they walked from the horse barn all the way down, and did see water flowing. The swale is grass lined and full of vegetation for 60-70% of distance, then got a little more channelized by the house and property. The stream bed did have signs of rock and gravel in the bottom. It gets steeper beyond their property. They observed drainage tiles and foundation drains that add water along the way.

Jon S. agreed with Ted B., and said this was a manufactured swale; it has been enhanced appropriately and legally over time to increase water flow, and there is erosion there. He struggled to make this match the definition of a stream. In the woods, the stream is less manufactured (steeper).

Ted B. said from a water quality perspective, it would be better if it was less of channel, and more of a grass-lined swale. If erosion could be minimized (in a more natural state) it would benefit water quality.

Dick J. said it isn't spring fed, and there's nothing but drainage tiles that feed into it. He felt if it's a stream it should flow most of the year. He asked at the site visit about the erosion; it hasn't been touched in 30 years. He isn't sure that the definition is complete enough, as you could also argue that any roadside ditch is a stream.

Jon S. questioned the blue line on the map. We just had a strong storm that affected what they saw. Dick J. asked about how the mapping (blue line) was done. Mitchel C. replied that this information is from the state, and he believed it was from a combination of sources (topo, walking).

Dick J. asked if this is a situation where the board can apply common sense, or is the question if this meets the language in the rules. Mitchel C. said it is open to board's interpretation. Greg W. chimed in from a lawyer perspective that if the language of the regulation is clear, then the language should apply, and they should not find the common sense interpretation.

John Lyman. asked if the state found it wasn't a stream; Suzanne M. said it is subject to town regulation (the state stated that no permit is required for modification here, as it is not under state jurisdiction).

Ted B. mentioned that they can get away from the visible stream bed with rock bottom, as the state said that you can change the stream without a permit. He suggested that you could un-channelize it (getting an engineer's advice), and this would improve water quality and allow them to build their deck.

Jon S. struggled with going against the Zoning Administrator's determination; at the site visit, he stood on ledge in the stream, and it will continue to erode around edges of stream bed. He found it difficult to apply this regulation, but he did observe exposed rock and gravel in the stream bed.

John Lyman. asked if there is a way to help mitigate expansion without causing further harm to the waterway. Ted B. said some (civil engineer) would know how to do this, like rip-rap in the ditches. John L. asked if there is a way to design the deck to minimize harm; Mitchel C. and Ted B. said the issue is the setback. John L. asked if it is possible to grant a variance; the Board replied that would be a different hearing/case.

Jon S. challenged the quality of the mapping, but said the language is hard to argue with.

Dick J. asked why you wouldn't include a town ditch as a stream in that definition. The Board discussed setback distances on different streams in and out of the village area.

Dick J. opened the discussion to the public. Dennis P. asked if the town has jurisdiction to take it off the map. Mitchel C. said Suzanne M. could take it off the map if she deemed it not a stream. Dennis P., as a member of the Public, said it is a swale; you could put a French drain in there to improve water quality. Over time it has eroded the ground. It's more of a stream where it gets steeper.

John Little. said when they first came to the Board to do the subdivision, they met with Peter Erb, who said they shouldn't put it in the hayfield, so they shrunk their building envelope down to its current location, and they had to blast ledge to put in their house. They've had to jump through a lot of hoops to make it work for everyone.

Ted B. made a motion to uphold the Zoning Administrator's finding, but given the state's statement that it does not need permits to work in that area, it is under the applicant's control to turn it into not a stream by unchannelizing it which would be better for water quality as well.

Mitchel C. said there may be other ways to do this as well, and referred to the application heard recently at Beecher Hill Brook at Town Garage.

Greg W. said procedurally we have to make a motion to grant the appeal (in the affirmative), because there have to be 4 members to overturn the Zoning Administrator's decision.

Ted B. made a motion to deny appeal, with the rest as commentary.

Dick J. made a motion to uphold the appeal. Greg W. recommended adding language overturning the ZA's decision, to determine that the water course at issue is not a stream.

Prior motions by Ted B. were withdrawn.

John Lyman. **made a motion to uphold the appeal**, and Jon S. **seconded the motion**. Dick J. closed the public hearing. The Board **voted 2-3** (Ted B., Jon S., and Bryan C. opposed). The motion did not pass.

Jon S. said there is currently a move to update the state's mapping. Mitchel C. added there will be a written decision, to be approved within 45 days by the Board.

Dennis P. began leading the meeting.

**Claudette Amparo:** Conditional Use application for a home occupation bakery on a 6.56-acre property located at 924 Pond Road in the Rural Residential 1 Zoning District. The applicant is proposing to use a food truck to prepare food to be sold elsewhere.

Claudette Amparo said she planned to start cooking in truck from home and making deliveries, but they decided to go back to Frost and be there the whole summer (not doing cooking at home truck yet). Uber Eats could come to pick up food and deliver it, but they don't come to Hinesburg yet. Perhaps in future years they can come to Hinesburg to pick up food. Mitchel C. suggested she could apply to have the license so she can do this business in the future. The Board asked, and she answered, she currently cooks food in truck, and is state licensed.

Ted B. said he has no issue showing trailer as an accessory structure. Mitchel C. said there is plenty of space for turning around, and it is well screened. The only Public comment was from a neighbor, Barbara Forauer, who supports the application.

Ted B. **made a motion to close the public hearing and direct staff to draft conditions of approval**. Greg W. **seconded the motion**. The Board **voted 7-0** to approve.

#### **Other Business:**

#### **News/Announcements/Correspondence:**

Mitchel C. mentioned that in 2 weeks we will be in the main hall to hear Hinesburg Center II. This is a new sketch plan, broken into two phases. Greg W. asked about expansion of the wastewater treatment facility; Mitchel C. replied that there will be a need to upgrade the WWTF when they reach a certain

amount of use. The allocations being approved have that in mind. Dennis P. asked how many extensions we did on this application, because we thought the sketch plan was going to be the same in the future; the Board said this would be a different issue than they needed to be concerned with now.

Mitchel C. added that on July 2, they are planning an outside trip, possibly to see other stormwater systems. Jon S. will be recusing and absent on the 4<sup>th</sup>, and will be absent on the 18<sup>th</sup>.

The Hinesburg Center II application is set up online; Mitchel C. received more submittals today and will add include these new submittals in the Dropbox soon.

**The meeting adjourned at 8:24 PM.**

Respectfully submitted,  
Kate Kelly, Recording Secretary